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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 Shonna Coleman, on behalf of herself and all
12 others similarly situated,

13 Plaintiff,

14 v.

15 Microsoft Corporation,

16 Defendant.

NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

17 Plaintiff Shonna Coleman (“Plaintiff”), on behalf herself and all others similarly situated,
18 alleges as follows:

19 **I. INTRODUCTION**

20 1. A browser extension is a software program that adds custom functionality to a web
21 browser. Coupon browser extensions are widely used by online shoppers to identify coupons and
22 discounts on products and services they have already added to their online shopping carts.

23 2. Typically, a consumer must select and install a browser extension, and register for
24 an account, in order to get access to coupons and discounts through that browser extension.

25 3. The Microsoft Shopping browser extension, however, comes pre-loaded on
26 Microsoft’s Edge browser, which is the default internet browser on every Windows computer.

1 4. According to Microsoft, the Microsoft Shopping browser extension is a free tool
2 that automatically scans the internet for coupons and discount codes; offers users price comparison
3 and price history tools; and incorporates a built-in “Microsoft Cashback” system that allows
4 shoppers to earn credits to their Microsoft Rewards account for certain purchases. Microsoft
5 Shopping has purportedly found users over \$12.4 billion in savings.

6 5. Because of these features, the Microsoft Shopping browser extension appeals to
7 consumers looking for a discount on a product or service that they are already interested in
8 purchasing and have already added to their online shopping carts.

9 6. Microsoft Shopping can be used on desktop and laptop computers, and it can also
10 be used on mobile devices by downloading the Microsoft Edge or Microsoft Bing Search apps.

11 7. Millions of people in the United States have activated the Microsoft Shopping
12 browser extension during their online purchases.

13 8. The Microsoft Shopping browser extension, however, is designed to
14 misappropriate commissions from online marketers, including, but not limited to, website
15 operators, online publications, and content creators, like YouTubers, bloggers, and social media
16 influencers.

17 9. Online marketers earn money by participating in affiliate marketing programs. As
18 part of these programs, the online marketer is assigned unique affiliate marketing links and
19 tracking tags, including affiliate marketing cookies. The merchants that work with the online
20 marketers use these tracking tags and affiliate marketing cookies to determine who gets credit for
21 referrals and earns sales commissions on consumers’ purchases.

22 10. Online marketers direct their followers and viewers to specific products or services
23 via affiliate marketing links that they share on their respective platforms and social media channels.
24

12. However, the Microsoft Shopping browser extension cheats these online marketers out of commissions to which they are entitled by altering the checkout process and removing the online marketers' tracking tags and affiliate marketing cookies.

13. As described in greater detail below, Microsoft programmed the Microsoft Shopping browser extension to systematically misappropriate commissions that belong to online marketers like Plaintiff and class members. More specifically, Microsoft programmed the Microsoft Shopping browser extension to substitute Microsoft's own affiliate marketing cookie in place of an online marketer's affiliate marketing cookie. Microsoft misappropriates online marketers' commissions in this way even though customers are using the online marketers' specific affiliate web links to access the website through which they are purchasing the product or service.

14. Plaintiff and the Class are online marketers whose commission payments Microsoft has wrongfully misappropriated. Plaintiff brings this case on behalf of herself and all others similarly situated to recover the damages she and the class members have sustained, and to enjoin Microsoft's wrongful conduct going forward.

II. JURISDICTION

15. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from Microsoft, there are more than one hundred class members nationwide, and the aggregate amount in controversy exceeds \$5,000,000.

16. This Court has personal jurisdiction over Microsoft because it maintains its principal place of business in Washington.

17. Venue is proper under 28 U.S.C. § 1391(a) through (d) because Microsoft's headquarters and principal place of business is located in this District, Microsoft resides in this District, and substantial parts of the events or omissions giving rise to the claims occurred in or emanated from this District, including, without limitation, decisions made by Microsoft's governance and management personnel.

III. PARTIES

A. Plaintiff

18. Shonna Coleman is a resident of Nebraska.

B. Defendant

19. Microsoft Corporation (“Microsoft” or “Defendant”) is a Washington corporation with a principal place of business at 1 Microsoft Way, Redmond in King County, Washington.

IV. RELEVANT FACTS

A. Background

1. The Microsoft Shopping Browser Extension

20. In 2020, Microsoft launched Microsoft Shopping, a browser extension that comes pre-installed on its Microsoft Edge browser—the default internet browser on every Windows computer.

21. Microsoft touts Microsoft Shopping's ability to save consumers time and money by instantaneously scanning the internet for coupon codes and discounts.

1 22. Since its launch of the Microsoft Shopping browser extension in 2020, Microsoft
2 has expanded the product's functionality and compatibility, making its browser extension a
3 standalone product that can be added to competing internet browsers, such as Google Chrome.

4 23. Microsoft has also integrated the Microsoft Shopping software into Microsoft's
5 Bing search engine such that consumers using the Firefox or Safari website browsers—two
6 browsers that are not compatible with the Microsoft Shopping browser extension—are still able to
7 use the Microsoft Shopping features.

8 24. Microsoft persuades consumers to activate the Microsoft Shopping browser
9 extension by promising to search the internet for coupons that can be applied to items that are
10 already in the consumer's online shopping cart, offering price-comparison and price history tools,
11 and by providing shopping rewards where users can earn cashback for online purchases.

12 25. Unlike other coupon browser extensions, which require the user to first download
13 the extension and register for an account in order to access coupons and discounts, Microsoft
14 Shopping is pre-installed on millions of devices and can be used with just a few clicks.

15 26. Microsoft Shopping's seamless functionality and integration with Microsoft Edge
16 gives Microsoft a competitive edge, allowing it to reach consumers who are less tech savvy and
17 may be wholly unfamiliar with the concept of browser extensions.

18 27. This popularity is buoyed by the fact that all Windows computers—both desktop
19 and laptop computers—come pre-loaded with only one internet browser: Microsoft Edge.

20 28. All Windows computers thus come pre-loaded with only one shopping browser
21 extension: Microsoft Shopping.
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1 29. Any user who purchases a new Windows computer and wishes to shop online must,
2 therefore, do so using the Microsoft Edge browser, pre-loaded with Microsoft Shopping, unless
3 the user manually downloads a different browser of their choice.

4 30. The Microsoft Edge Browser is the third most commonly used web browser in the
5 United States behind Google Chrome and Safari.

6 31. Millions of individuals, therefore, use Microsoft Shopping every day. Microsoft
7 claims to have saved shoppers over \$12.4 billion U.S. dollars, which averages out to approximately
8 \$431 per shopper each year.
9

10 **2. Online Marketers and the Commission System**

11 32. With the rise of e-commerce and the ever-increasing popularity of social media
12 platforms like YouTube, Instagram, and TikTok, several retailers have turned to online marketers
13 to promote and market their products to consumers.

14 33. Online marketers earn commissions by directing their audience to affiliate links
15 that the marketers publish or share on their various platforms and social media channels.
16

17 34. Affiliate links are web-based hyperlinks that direct consumers to a website where
18 the consumers may purchase the product or service being promoted by the online marketer.

19 35. Merchants use tracking tags on their websites to determine whether a consumer
20 landed on the webpage for their product or service and made a purchase after clicking an affiliate
21 link. These merchants can then attribute the sale to the specific online marketer responsible for the
22 affiliate link, providing that online marketer with a commission payment.
23

24 **3. Microsoft's Misappropriation of Online Marketer Commissions**

25 36. Unbeknownst to Plaintiff and other online marketers, Microsoft uses the Microsoft
26 Shopping browser extension to manipulate online shoppers' website traffic and network traffic

1 transmissions, namely by altering the tracking tags that are transmitted during the checkout
2 process.

3 37. Microsoft thus surreptitiously takes credit for sales commissions that it did not
4 earn—sales that instead resulted from a consumer using an online marketer’s unique marketing
5 affiliate link.

6 38. Microsoft Shopping displaces tracking tags that identify a given online marketer as
7 the source of the referral, substitutes Microsoft’s own tracking tags, and holds Microsoft out as the
8 referrer of the specific product and/or service.

9 39. This misappropriation happens even though the sale in question emanated from an
10 online marketer’s specific affiliate marketing link for a specific product or service.

11 40. Analysis of network traffic on websites where the Microsoft Shopping browser
12 extension is running reveals electronic transmissions and communications between an online
13 shopper’s web browser, the given website, and other third parties.

14 41. This network traffic is typically invisible to ordinary website users and operates in
15 the background of the ordinary website user’s online experience.

16 42. Reviewing this network traffic reveals that when an online shopper activates
17 Microsoft Shopping, the Microsoft Shopping browser extension silently and invisibly removes
18 affiliate cookies and tracking tags that would otherwise credit the rightful salesperson—the online
19 marketer—with the sale of that particular product or service.

20 43. The images below illustrate what happens when a shopper clicks on an online
21 marketer’s affiliate link in order to purchase a product or service that the online marketer is
22 promoting and proceeds to the merchant’s website to purchase—or “checkout”—that product or
23 service. Importantly, whether the marketer will be credited with the referral and commission
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ultimately depends on whether the shopper has activated the Microsoft Shopping browser extension:

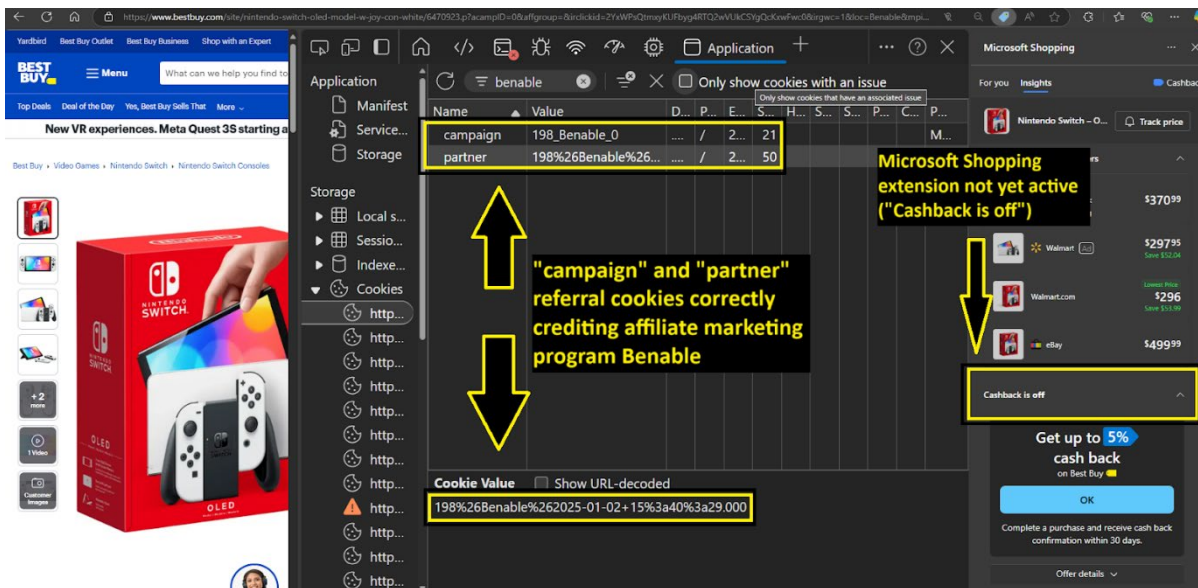


Image 1. This screenshot was taken during the checkout process at bestbuy.com after navigating to that webpage from an online marketer's affiliate marketing link.

44. Image 1 shows the merchant's website markup (left), which is what ordinary website visitors see, and the inspection panel (right), which provides a glimpse into what is happening in the background before the Microsoft Shopping browser extension is activated.

45. In the Image, the user navigated to bestbuy.com by clicking on an online marketer's affiliate marketing link, added an item to their cart, and proceeded to the checkout page.

46. The extensions tab on the right side of Image 1 shows that the Microsoft Shopping browser extension is available, but has not yet been activated on this particular webpage. At this point, the campaign and partner cookies correctly attribute the referral to "Benable" as shown in Image 2:

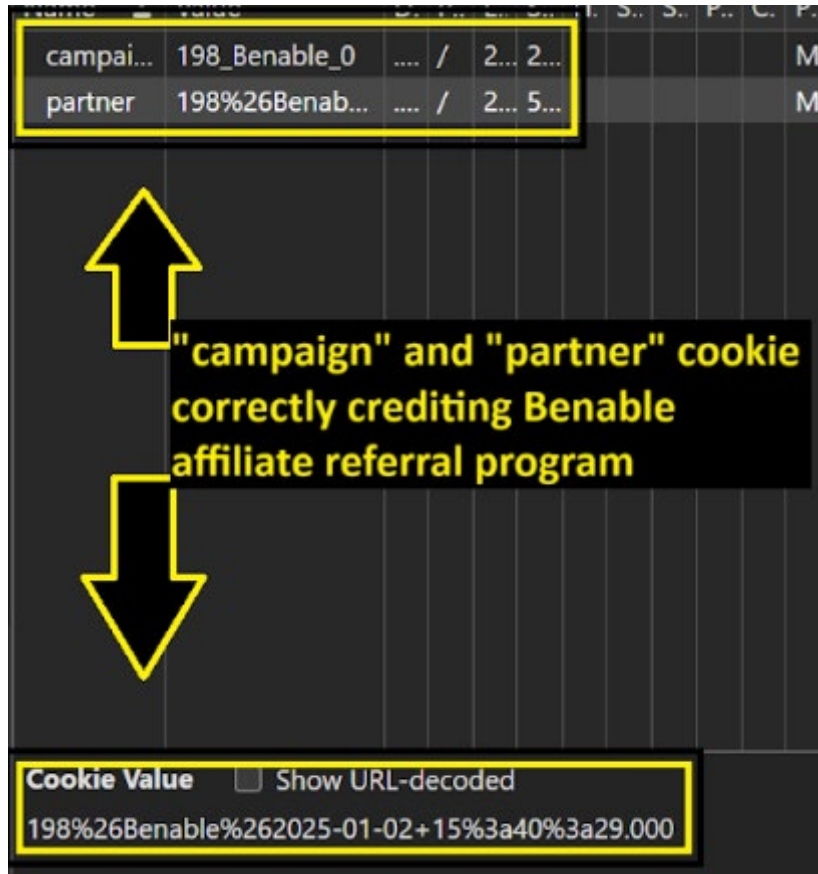


Image 2. This image is a zoomed-in version of Image 1, showing that the affiliate marketing cookies correctly credit the online marketer (“Benable”) with the referral and forthcoming sale of the product.

47. In this scenario, the online marketer (Benable) that the merchant (BestBuy) partnered with is set up to get credit for the referral and should receive a commission if the shopper completes their purchase.

48. However, as demonstrated in the images below, once the Microsoft Shopping browser extension is activated, the “campaign” and “partner” cookies are removed and replaced with Microsoft’s own affiliate marketing cookie.

49. As seen in Image 3, Microsoft Shopping created a pop-up alerting the user they could earn cash back on the purchase:

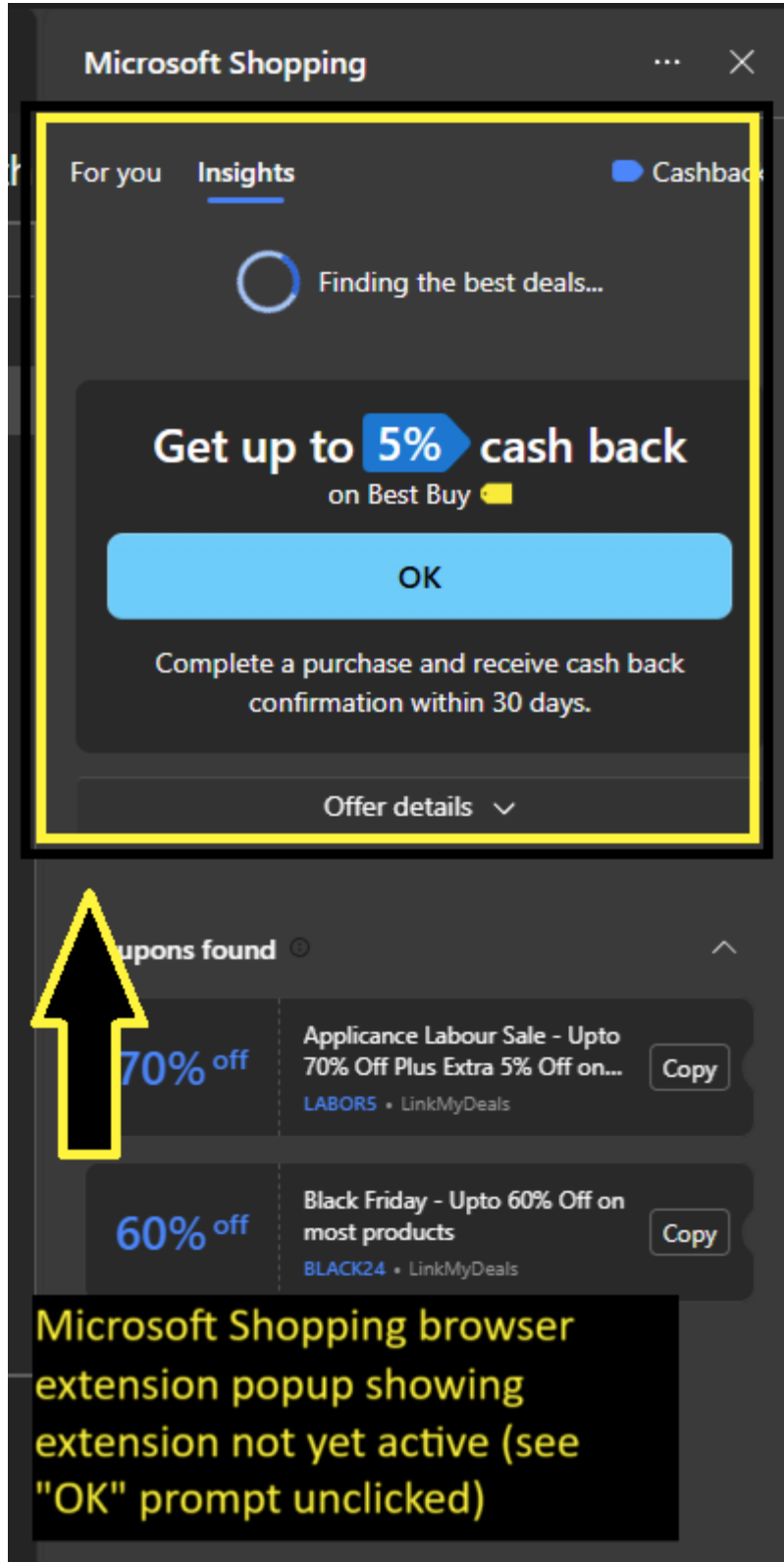


Image 3. Microsoft Shopping creates a pop-up banner on the shopper's web browser, enticing the shopper to activate the browser extension even though it did not identify any coupons for the shopper to use in connection with this purchase.

50. If the user clicks the blue “Ok” button in the pop-up shown in Image 3, Microsoft Shopping is activated, and Microsoft Shopping replaces the online marketer’s affiliate marketing cookies with Microsoft’s own affiliate marketing cookies (“198_BingRebatesbyMicrosoft_0”) as shown in Images 4 and 5 below:

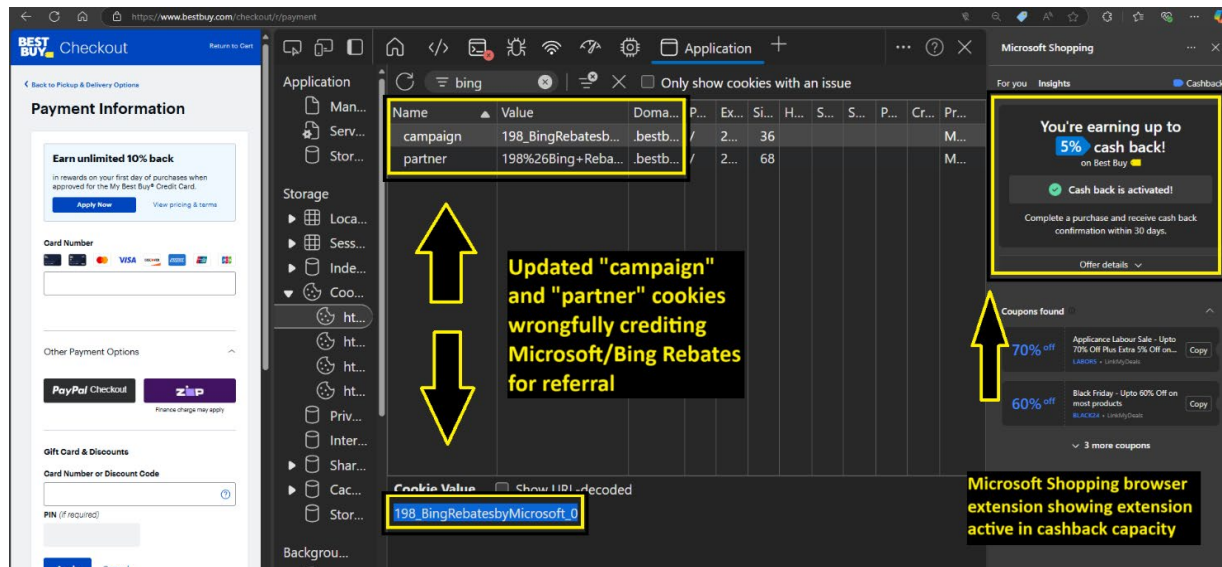


Image 4. This screenshot was captured during checkout after the shopper selected the blue “Ok” button shown in Image 3, thereby activating the Microsoft Shopping browser extension. The green check mark in the right column confirms the activation of the Microsoft Shopping browser extension by stating that “Cash back is activated!”

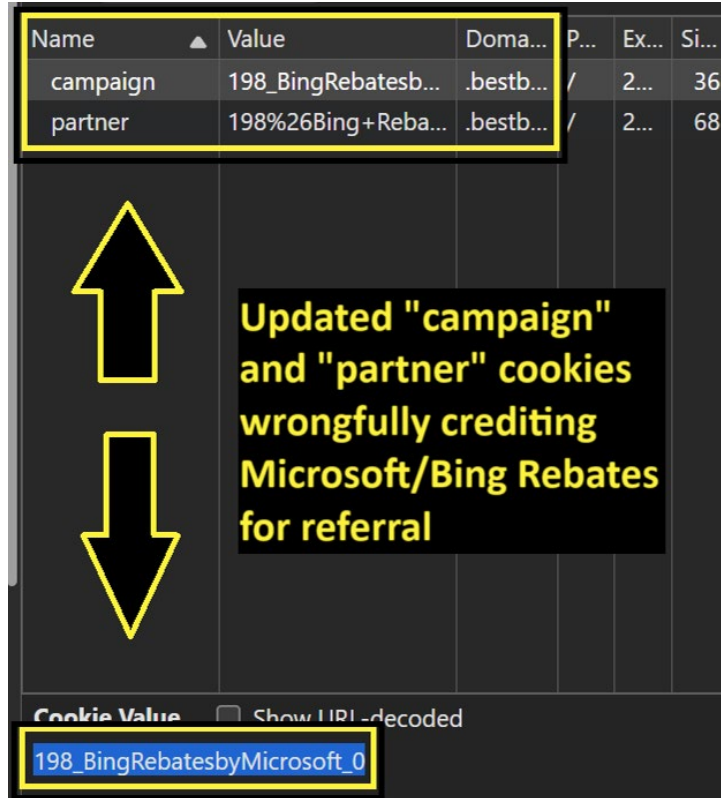


Image 5. This is a zoomed-in screenshot that shows that Microsoft's own marketing affiliate cookies are now identified as the campaign and partner.

51. Images 4 and 5 depict how Microsoft alters the checkout process and substitutes a specific online marketer's own cookies (shown in Image 2) with Microsoft's cookies.

52. In this scenario, Microsoft gets credit for the referral and ultimate purchase of the product even though Microsoft neither helped the shopper identify the product nor provided the shopper with any additional discounts or coupons for the product.

B. The Exploitation of Last-Click Attribution and Affiliate Marketing Links.

53. When a shopper clicks on an online marketer's affiliate marketing link, a tracking tag is generated that allows the merchant to know who to credit with the referral and commission for the sale.

54. The tracking tag is saved on the shopper's browser in the form of a cookie that will expire sometime in the future—typically within 2-30 days, depending on the particular affiliate

1 program. Preserving the cookie in the browser for a specified number of days ensures that, even if
2 it takes a few days for the shopper to complete their purchase, the online marketer will still get
3 credit for the sale.

4 55. When it comes to online referral commissions from affiliate marketing links, the
5 industry standard used for crediting sales is “last-click attribution,” which means that the last click
6 determines who gets credit for a sale.

7
8 56. Consider a hypothetical: a customer clicks on a blogger’s affiliate link to a
9 particular product but does not purchase the product. A few weeks pass, and the customer sees a
10 different online marketer’s YouTube video promoting the same product. The customer clicks on
11 this second online marketer’s affiliate link for the product and completes their checkout.

12 57. In this scenario, last-click attribution gives the second online marketer, the
13 YouTuber, credit for the sale. The blogger does not get credit for the sale. This happens because,
14 when the customer clicked on the YouTuber’s affiliate link and opened the new checkout tab, the
15 YouTuber’s affiliate cookie displaced the blogger’s affiliate cookie.

16
17 58. The Microsoft Shopping browser extension is purposely designed to exploit the
18 last-click attribution process, and it achieves this by producing pop-ups during the checkout
19 process in order to simulate referral clicks.

20 59. Stated differently, Microsoft has designed its browser extension in a manner that
21 mimics the hypothetical described above. Microsoft forces users to actively engage with the
22 Microsoft Shopping browser extension—i.e., click buttons—in order to receive a discount, test
23 coupons, or earn cash back. These clicks are important to Microsoft because, without them, the
24 online marketer in question will still be credited with the sale and receive any corresponding
25
26

1 commission payment. Microsoft only gets credit for the sale if the online shopper clicks on the
2 pop-up and activates Microsoft Shopping.

3 60. Microsoft's goal, therefore, is to entice online shoppers to activate Microsoft
4 Shopping even when the browser extension has not identified any applicable coupons.

5 **C. Activation of the Microsoft Extension**

6 61. Microsoft persuades online shoppers to activate the Microsoft Shopping browser
7 extension in several different ways, each of which displaces the rightful referrer and steals
8 commission credit for sales that Microsoft did not influence, much less generate.

9 62. One way that Microsoft entices consumers to activate the Microsoft Shopping
10 extension and steals credit for sales is merely by virtue of the consumer using Microsoft as their
11 internet browser. Consumer A clicks on Online Marketer A's affiliate link and adds a
12 recommended product to their online shopping cart. As Consumer A proceeds through checking
13 out on the merchant's website, Microsoft Shopping creates a pop-up box telling Consumer A that
14 "Microsoft Edge found coupons," persuading Consumer A to click the "Try all coupons" button
15 on the pop up. Once Consumer A clicks this button, Microsoft Shopping discreetly opens a new
16 tab that mimics a referral click, thereby removing Online Marketer A's affiliate marketing cookie
17 and replacing it with Microsoft's own affiliate marketing cookie. By persuading Consumer A to
18 click the "Try all coupons" button, Microsoft thus covertly misappropriates credit for the referral
19 and sale.

20 63. Another way that Microsoft misappropriates credit for sales is by suggesting
21 coupons might be available when none are. In this hypothetical, Consumer B clicks on Online
22 Marketer B's link to a merchant and proceeds to check out to complete the purchase. Online
23 Marketer B's affiliate marketing cookie attaches to the transmission in order to credit the Marketer
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1 with the sale. At checkout, however, Microsoft once again creates a pop-up box telling Consumer
2 B that “Microsoft Edge found coupons,” persuading Consumer B to click the “Try all coupons”
3 button on the pop up. Consumer B clicks the “Try all coupons” button, but none of the discount
4 codes work. Nevertheless, Microsoft uses Consumer B’s action of clicking on the “Try all
5 coupons” button to remove Online Marketer B’s affiliate marketing cookie through the same
6 process described in the paragraph above. Microsoft does this even though Microsoft failed to
7 identify a single applicable coupon. Online Marketer B thus loses credit for the referral and a
8 commission from the sale.
9

10 64. Yet another way in which Microsoft misappropriates credit for sales is by
11 weaponizing Microsoft Shopping’s cash back rewards program. In this hypothetical, Consumer C
12 clicks on Online Marketer C’s affiliate marketing link, selects the recommended item to purchase,
13 and proceeds to checkout. Through this process, Online Marketer C’s unique identifier is generated
14 as a cookie tied to the transaction. Microsoft Shopping is active on Consumer C’s browser. Yet
15 again, Microsoft Shopping cannot identify any applicable discount codes that Consumer C could
16 use in the purchase. Not wanting to lose out on the opportunity to misappropriate credit for the
17 sale, Microsoft Shopping recommends that Consumer C activate Microsoft Shopping’s cash back
18 rewards feature to “Get up to 3% cash back.” Consumer C clicks the “OK” button that accompanies
19 this offer, hoping to get money back. Microsoft then once again simulates a referral click in a new
20 tab, thereby covertly removing Online Marketer C’s affiliate marketing cookies and supplanting
21 them with Microsoft’s, earning Microsoft credit for the referral and ultimate commission on the
22 sale.
23

24
25 65. Each of these three hypotheticals are not, in fact, hypotheticals. Rather, they are
26 depictions of three methods by which Microsoft routinely deploys its browser extension to

misappropriate commissions from their rightful owners—online marketers.

D. Plaintiff's Experience

66. Plaintiff Shonna Coleman is an influencer and content creator who earns commission payments from affiliate marketing links she shares on social media, including Facebook (*see, e.g.,* <https://www.facebook.com/share/p/1HYMCVzoAc/>, <https://www.facebook.com/share/p/15XvJdJwmY/>, <https://www.facebook.com/share/p/194HujNaX9/>) and X (formerly known as Twitter) (@shonnacoleman).

67. In past years, Ms. Coleman has received substantial commission payments from products purchased via her affiliate marketing links.

68. Ms. Coleman would have earned more income in the form of commission payments but for Microsoft's scheme to usurp commissions through the Microsoft Shopping browser extension.

69. Microsoft, through its Microsoft Shopping browser extension, stole credit for sales and conversions that Ms. Coleman originated via her own platforms—sales and commissions effected through the affiliate marketing links that Ms. Coleman shared with her follower base on her social media accounts.

E. Damages & Harm

70. Plaintiff Coleman and class members were harmed by Microsoft's conduct because the Microsoft Shopping browser extension systematically steals commission payments from their rightful owners—i.e., the online marketer that promoted and shared the affiliate link and generated the referral and ultimate sale of a product or service.

1 71. Ms. Coleman promotes products via her social media channels and posts affiliate
2 marketing links to those products.

3 72. Ms. Coleman's unique affiliate marketing tag is set as a cookie that identifies her
4 as the specific referrer.

5 73. When one of Plaintiff Coleman's followers clicks on one of her affiliate marketing
6 links and adds products to their online shopping cart, Plaintiff Coleman's unique affiliate
7 marketing tag—which is set as a cookie—attaches to the shopping session and attributes the
8 referral and sale of the product to Plaintiff Coleman. As a result, Plaintiff Coleman is credited with
9 the sale and corresponding commission payment.
10

11 74. But, if one of Ms. Coleman's followers activates the Microsoft Shopping browser
12 extension during checkout by clicking on a button to apply coupons or get cash back, Microsoft
13 will remove Ms. Coleman's affiliate marketing cookie and replace it with Microsoft's own affiliate
14 marketing cookie, thereby stealing both credit for the referral and the resulting commission
15 payment.
16

17 75. Ms. Coleman spends a substantial amount of time and money cultivating her
18 follower base and promoting the products that she features in her affiliate marketing links.

19 76. Ms. Coleman relies on the stream of income that she generates through her work as
20 a content creator and from the commissions that she earns via her affiliate marketing links.

21 77. Ms. Coleman was harmed by Microsoft, via the Microsoft Shopping browser
22 extension, which deprived her of referral fees and sales commissions to which she is rightfully
23 entitled as the generator of those referrals and sales.
24

25 78. The Microsoft Shopping browser extension is activated during millions of online
26 purchases each year. In the absence of the Microsoft Shopping browser extension, Plaintiff

1 Coleman and class members would have earned more money in the form of referral fees and sales
2 commissions from their respective affiliate marketing links.

3 79. Plaintiff Coleman continues to devote time and energy to content creation to
4 generate commissions. Plaintiff Coleman accordingly faces future harm in the form of stolen
5 referral fees and sales commissions because the Microsoft Shopping browser extension continues
6 to steal affiliate marketing commissions with each passing day.

7 V. CLASS ALLEGATIONS

8
9 80. Plaintiff, on behalf of herself and as a class action under the Federal Rules of Civil
10 Procedure, Rule 23(a), (b)(1), (b)(2), (b)(3), and (c)(4), seeks damages and injunctive relief on
11 behalf of the members of the following Class and constituent Subclass (collectively, the “Class”):

12 **Nationwide Class:** All persons in the United States who participated in an
13 affiliate commission program with a United States eCommerce merchant and
14 had commissions diverted to Microsoft as a result of the Microsoft Shopping
browser extension.

15 **Nebraska Subclass:** All persons in Nebraska who, participated in an affiliate
16 commission program with a United States eCommerce merchant and had
17 commissions diverted to Microsoft as a result of the Microsoft Shopping
browser extension.

18 81. Excluded from the Class are Defendant and its officers, directors, management,
19 employees, subsidiaries, or affiliates. Also excluded are the district judge or magistrate judge to
20 whom this case is assigned, as well as those judges’ immediate family members, judicial officers
21 and their personnel, and all governmental entities.

22 82. **Numerosity:** Members of the Class are so numerous that joinder is impracticable.
23 There are at least tens of thousands of members of the Class, geographically dispersed throughout
24 the United States, such that joinder of all Class members is impracticable. There are at least
25 thousands of members of the Subclass, such that joinder of all Subclass members is likewise
26 impracticable.

1 83. **Typicality:** Plaintiff's claims are typical of the claims of the other class members.
2 The factual and legal bases of Defendant's liability are the same and resulted in injury to Plaintiff
3 and all other members of the Class.

4 84. **Adequate representation:** Plaintiff will represent and protect the interests of the
5 Class both fairly and adequately. Plaintiff has retained counsel competent and experienced in
6 complex class action litigation. Plaintiff has no interests that are antagonistic to those of the Class,
7 and her interests do not conflict with the interests of the class members she seeks to represent.

8 85. **Commonality and Predominance:** Questions of law and fact common to the
9 members of the Class predominate over questions that may affect only individual class members
10 because Defendant has acted on grounds generally applicable to the Class and because class
11 members share a common injury. Thus, determining damages with respect to the Class as a whole
12 is appropriate. The common applicability of the relevant facts to the claims of Plaintiff and the
13 proposed Class are inherent in Defendant's wrongful conduct because the injuries incurred by
14 Plaintiff and each member of the Class arose from the same conduct alleged herein.

15 86. There are common questions of law and fact specific to the Class that predominate
16 over any questions affecting individual members, including:

- 17 a. Whether Defendant programmed and designed the Microsoft Shopping browser
18 extension in a manner that wrongfully credits it as the originator of sales
19 referrals;
20 b. Whether the scheme described herein results in Microsoft being awarded
21 commission payments it did not rightfully earn;
22 c. Whether Microsoft was unjustly enriched to the detriment of Plaintiff and class
23 members in the form of commission payments;
24 members in the form of commission payments;
25 members in the form of commission payments;
26 members in the form of commission payments;

- 1 d. Whether Defendant, through the actions alleged in this complaint, violated
2 consumer protection laws in the state of Nebraska;
- 3 e. Whether consumers and class members have been damaged by Defendant's
4 conduct; and
- 5 f. The nature and scope of appropriate injunctive relief.

6 87. **Superiority:** Class proceedings on these facts are superior to all other available
7 methods for the fair and efficient adjudication of this controversy, given that joinder of all
8 members is impracticable. Even if members of the Class could sustain individual litigation, that
9 course would not be preferable to a class action because individual litigation would increase the
10 delay and expense to the parties due to the complex factual and legal controversies present in this
11 matter. Here, the class action device will present far fewer management difficulties, and it will
12 provide the benefit of a single adjudication, economies of scale, and comprehensive supervision
13 by this Court. Further, uniformity of decisions will be ensured.

14 88. Class certification is also appropriate under Rules 23(b)(1), (b)(2), and/or (c)(4)
15 because:

- 16
- 17 • The prosecution of separate actions by the individual members of the Class
18 would create a risk of inconsistent or varying adjudications establishing
19 incompatible standards of conduct for Defendant;
 - 20 • The prosecution of separate actions by individual class members would create
21 a risk of adjudications that would, as a practical matter, be dispositive of the
22 interests of other class members not parties to the adjudications, or would
23 substantially impair or impede their ability to protect their interests;
 - 24
 - 25
 - 26

- Defendant has acted or refused to act on grounds generally applicable to the Class, making injunctive and corresponding declaratory relief appropriate with respect to the Class as a whole; and
- The claims of class members are comprised of common issues whose resolution in a class trial would materially advance this litigation.

TOLLING OF THE STATUTES OF LIMITATIONS

89. All applicable statute(s) of limitations have been tolled by Defendant's knowing and active concealment and denial of the facts alleged herein. Plaintiff and class members could not have reasonably discovered Defendant's practice of displacing their affiliate marketing tracking tags and cookies, surreptitiously manipulating network transmissions, and allowing Microsoft to take credit for sales commissions it did not earn.

90. Defendant was and is under a continuing duty to disclose to Plaintiff and class members its practice of displacing tracking tags that point to online marketers as the source of a referral and substituting its own tracking tags to appropriate commissions that belong to online marketers like Plaintiff and class members. As a result of the active concealment by Defendant, any and all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION **UNJUST ENRICHMENT**

(ON BEHALF OF THE NATIONWIDE CLASS)

91. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

92. Plaintiff lacks an adequate remedy at law.

1 93. Plaintiff and class members have an interest, both equitable and legal, in the referral
2 fees and commission payments to which they were wrongfully deprived. These payments were
3 rightfully earned by Plaintiff and class members, not Microsoft.

4 94. Microsoft benefitted from the referral fees and commission payments that were
5 credited to it as a function of the Microsoft Shopping browser extension wrongfully claiming
6 credit for commissions via last-click attribution.

7 95. Microsoft understood that it so benefitted, and it also understood and appreciated
8 that the Microsoft Shopping browser extension would cause the harm described herein.

9 96. But for Microsoft's unjust and improper use of the browser extension, Microsoft
10 would not have been credited and awarded commission on sales that resulted from Plaintiff's and
11 class members' respective affiliate marketing links.

12 97. As a result of Microsoft's wrongful conduct as alleged in this complaint, Microsoft
13 has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and class members.

14 98. Microsoft continues to benefit and profit from the browser extension while Plaintiff
15 and class members continue to have their rightful commission payments diverted to Microsoft.

16 99. Microsoft's unjust enrichment is traceable to, and resulted directly and proximately
17 from, the conduct alleged herein, including by deploying the Microsoft Shopping browser
18 extension in a manner that wrongfully credits Microsoft with referrals and commissions that
19 Microsoft did not rightfully earn.

20 100. The benefit conferred upon, received by, and enjoyed by Microsoft was not
21 conferred officiously or gratuitously, and it would be inequitable and unjust for Microsoft to retain
22 the benefit.

101. Equity and good conscience militate against permitting Microsoft to retain the profits and benefits from its wrongful conduct, which should be restored to Plaintiff and class members.

SECOND CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE
(ON BEHALF OF THE NATIONWIDE CLASS)

102. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

103. Plaintiff and class members are engaged in an economic relationship with eCommerce merchants by referring their followers to those merchants through affiliate links. In return, eCommerce merchants provide Plaintiff and class members with referral fees or commissions. These relationships are ongoing, and Plaintiff and class members expect to continue earning commissions in exchange for referrals.

104. Microsoft is aware of the referral and commission relationship between Plaintiff and class members on the one hand and eCommerce merchants on the other hand.

105. Through use of the Microsoft Shopping browser extension, Microsoft steals commission payments from Plaintiff and class members who promoted and shared an affiliate link and generated the referral and ultimate sale of an eCommerce merchant's product or service. Specifically, Microsoft displaces tracking tags that identify online marketers as the source of the referral, substitutes Microsoft's own tracking tags, and holds itself out as the referrer of the specific products and/or services even though the sale in question emanated from an online marketer's affiliate marketing link.

106. Microsoft either intended to usurp commissions from Plaintiff and class members through the conduct alleged herein or knew that its conduct would appropriate commissions and referral fees.

1 107. Plaintiff and class members were harmed by Microsoft's conduct because the
2 Microsoft Shopping browser extension deprives Plaintiff and class members of monies that they
3 rightfully earned as the true originators of sales arising from their affiliate marketing links.

4 108. Microsoft's conduct was a substantial factor in causing harm to Plaintiff and class
5 members in that, among other things, Plaintiff and class members suffered economic injury by
6 being deprived of commissions that they should have earned from referrals through their affiliate
7 links.

8
9 109. As a result of the above conduct, Microsoft is liable to Plaintiff and class members
10 for damages in an amount to be determined at trial.

11 **THIRD CAUSE OF ACTION**
12 **CONVERSION**
13 **(ON BEHALF OF THE NATIONWIDE CLASS)**

14 110. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

15 111. Plaintiff and class members possessed or had a right to possess commissions they
16 earned from referring consumers to products and services sold by eCommerce merchants. The
17 amount of each commission constituted a specific and identifiable sum.

18 112. Microsoft intentionally and substantially interfered with Plaintiff's and class
19 members' personal property by usurping commissions and referral fees owed to Plaintiff and class
20 members.

21 113. Microsoft, without proper authorization, assumed and exercised the right of
22 ownership over these commissions, in hostility to the rights of Plaintiff and class members,
23 without justification.

24
25 114. Microsoft's wrongful exercise of control over Plaintiff's and class members'
26 personal property constitutes conversion.

115. Plaintiff and class members neither assented to nor ratified Microsoft's interference with their commissions.

116. As a direct and proximate result of Microsoft's conversion, Plaintiff and class members were harmed.

117. Microsoft is liable to Plaintiff and class members for damages and costs permitted by law.

FOURTH CAUSE OF ACTION
VIOLATION OF THE WASHINGTON CONSUMER
PROTECTION ACT, RCW §§ 19.86, *ET SEQ.*
(ON BEHALF OF THE NATIONWIDE CLASS)

118. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

119. Microsoft is a "person" within the meaning of the Washington Consumer Protection Act, RCW 19.86.010(1), and it conducts "trade" and "commerce" within the meaning of RCW 19.86.010(2). Plaintiff and other members of the Class are "persons" within the meaning of RCW 19.86.010(1).

120. Microsoft is based in Washington and made the decision to design the Microsoft Shopping browser extension to misappropriate online marketers' credit for sales and commissions by altering the checkout process and removing online marketers' tracking tags and affiliate marketing cookies.

121. Microsoft's unfair acts have injured a substantial portion of the public. Microsoft's general course of conduct, as alleged herein, is injurious to the public interest, and the acts complained of herein are ongoing and/or have a substantial likelihood of being repeated.

122. As a direct and proximate result of Microsoft's unfair acts and practices, Plaintiff and class members suffered injury in fact.

123. As a result of Microsoft's conduct, Plaintiff and members of the Class have suffered actual damages.

124. Plaintiff and class members are entitled to an order enjoining the conduct complained of herein and ordering Microsoft to take remedial measures to stop its conduct; actual damages; treble damages pursuant to RCW 19.86.090; costs of suit, including reasonable attorneys' fees and costs; and any further relief as the Court may deem just and proper.

FIFTH CAUSE OF ACTION
VIOLATION OF NEBRASKA'S UNIFORM DECEPTIVE
TRADE PRACTICES ACT (UDTPA)
NEB. REV. STAT. §§ 87-301, *ET. SEQ.*
(ON BEHALF OF THE NEBRASKA SUBCLASS)

125. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

126. Nebraska's UDTPA makes it unlawful to engage in deceptive trade practices.

127. Microsoft violated Nebraska's UDTPA through its conduct as alleged herein. In particular, Microsoft's conduct constitutes a violation of Sections 87-302(a)(2), (a)(3), (a)(5), (a)(6), (a)(12), and (a)(16).

128. Microsoft is liable to Plaintiff and the Nebraska Subclass members for damages, costs, and injunctive relief as permitted by law.

SIXTH CAUSE OF ACTION
VIOLATION OF NEBRASKA CONSUMER PROTECTION ACT (NCPA)
NEB. REV. STAT. §§ 59-1602, *ET. SEQ.*
(ON BEHALF OF THE NEBRASKA SUBCLASS)

129. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

130. The NCPA provides, in relevant part, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful."

131. Microsoft violated the NCPA through its conduct as alleged herein.

132. Microsoft's conduct affected the public interest because it was widespread. Affiliate marketing links are ubiquitous, as is the Microsoft Shopping browser extension.

133. Microsoft is liable to Plaintiff and the Nebraska Subclass members for damages, costs, and injunctive relief as permitted by law.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that the Court:

A. Certify this case as a class action, and appoint Plaintiff as Class Representative and the undersigned attorneys as Class Counsel;

B. Enter judgment in favor of Plaintiff and the Class;

C. Enter injunctive and declaratory relief as is necessary to protect the interests of Plaintiff and the Class, including to prevent the Microsoft Shopping browser extension from taking credit for sales it did not originate;

D. Award all actual, general, special, incidental, statutory, treble, punitive, liquidated, and consequential damages and restitution to which Plaintiff and the Class are entitled;

E. Award disgorgement of monies obtained through and as a result of the wrongful conduct alleged herein;

F. Award Plaintiff and the Class pre- and post-judgment interest as provided by law;

G. Enter such other orders as may be necessary to restore to Plaintiff and the Class any money and property acquired by Microsoft through its wrongful conduct;

H. Award Plaintiff and the Class reasonable litigation expenses and attorneys'

1 fees, as permitted by law; and

2 I. Award such other and further relief as the Court deems necessary and
3 appropriate.

4 **VIII. JURY DEMAND**

5 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all
6 issues triable as of right.

7
8
9 DATED: January 21, 2025

Respectfully submitted,

10
11 By: /s/ Jason T. Dennett

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**pro hac vice forthcoming*

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